Subject Index

	Page
Statement of the case	2
Argument	3
I	
The issue regarding the constitutionality of the Estero Act is not pertinent to these opposing respondents	3
II	
The "one man one vote" issue is not pertinent to these opposing respondents	5
III	
Petitioner's action to obtain an accounting from the land developer is not pertinent to these opposing respondents	6
Conclusion	7

Table of Authorities Cited

	Pages
Cooper v. Estero Municipal Improvement District, et al., 70 A.C. 687	3, 6
Cooper v. Leslie Salt Company, et al., 70 A.C. 669	3, 5, 7

IN THE

Supreme Court of the United States

OCTOBER TERM 1968

No. 1412

WALTER S. COOPER, *Plaintiff and Appellant,* vs. LESLIE SALT COMPANY, et al., *Defendants and Respondents.*	California Supreme Court S.F. No. 22,616
WALTER S. COOPER, *Plaintiff and Appellant,* vs. T. JACK FOSTER, et al., *Defendants and Respondents.*	California Supreme Court S.F. No. 22,617
WALTER S. COOPER, *Plaintiff and Appellant,* vs. ESTERO MUNICIPAL IMPROVEMENT DISTRICT, et al., *Defendants and Appellants,* T. JACK FOSTER, et al., *Interveners and Respondents.*	California Supreme Court S.F. No. 22,619

BRIEF OF RESPONDENTS LESLIE SALT CO. AND SCHILLING ESTATE COMPANY IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

The Brief of Respondents Leslie Salt Co. and Schilling Estate Company in Opposition to the Petition of Walter S. Cooper for a Writ of Certiorari to

review the judgments of the Supreme Court of the State of California which were made in the above entitled matters on March 20, 1969, is hereby respectfully presented.

STATEMENT OF THE CASE

Petitioner Walter S. Cooper seeks review of three judgments which were made in the above entitled matters, only one of which judgments pertains to these opposing respondents, Leslie Salt Co. and Schilling Estate Company, and involves neither representative government nor public financial integrity in the Estero Municipal Improvement District.

The judgment pertaining to, and in favor of, these opposing respondents was entered in the action filed in San Mateo County Superior Court as Action Number 126789 on December 3, 1966, which petitioner characterizes as an action at law for a declaration of the legal effect of the Estero Act and legal remedies against the land developer and for the benefit of the Estero Municipal Improvement District and its taxpayers and residents. These opposing respondents were not the land developer but were nevertheless served in that action as "Doe" defendants. Demurrer was sustained without leave to amend in favor of defendants, respondents herein, Leslie Salt Co. and Schilling Estate Company, after demurrers of the other defendants had been sustained without leave to amend, and a separate judgment in favor of respondents Leslie Salt Co. and Schilling Estate Company was subsequently entered and affirmed on appeal in

Cooper v. Leslie Salt Company, et al., California Supreme Court Number SF No. 22616 disposed of by the decision of said Court, which appears in the Official Advance Sheets as 70 Advance California 669.

These opposing respondents were neither defendants nor otherwise involved in the second action filed by Petitioner in San Mateo County Superior Court as Action Number 127132 on December 20, 1966 in the form of a Petition for a Writ of Mandate. The title and number of this proceeding in the Supreme Court of the State of California was *Cooper v. Estero Municipal Improvement District, et al.*, S. F. No. 22619 and the decision of said Court was rendered on March 20, 1969 and appears in the Official Advance Sheets at 70 Advance California 687.

This Brief of Respondents Leslie Salt Co. and Schilling Estate Company in Opposition to the subject Petition is directed solely to Petitioner's attempt to have this Court review that aspect of the California Supreme Court decision at 70 Advance California 669 affirming the judgment in favor of said respondents. (*Cooper v. Leslie Salt Company, et al.*)

ARGUMENT

I

THE ISSUE REGARDING THE CONSTITUTIONALITY OF THE ESTERO ACT IS NOT PERTINENT TO THESE OPPOSING RESPONDENTS

Petitioner's only alleged cause of action against respondents Leslie Salt Co. and Schilling Estate Com-

pany is contained in his alleged Third Cause of Action of the Complaint as amended, filed in San Mateo County Superior Court Action Number 126789, wherein he alleges that $30,000,000 of the Estero Municipal Improvement District's funds was spent to improve and make salable the real property of the Foster respondents under the claim that said expenditure is authorized as reclamation. Without alleging any specific manner in which public moneys of the District have been applied to private purposes, Petitioner merely asserts in this alleged cause of action that these opposing respondents, Leslie Salt Co. and Schilling Estate Company, as Does IV and V, respectively, received moneys and benefits from the District. Apparently the moneys and benefits were those derived indirectly and incidentally by reason of the fact that deeds of trust were made by T. Jack Foster in favor of these opposing respondents, who were the original owners of some of the land now encompassed within the District, as security for the purchase price of land so purchased from said respondents and that the reclamation of this land necessarily increased the value of this security. This security transaction was the only way in which these opposing respondents were involved in the matters of which Petitioner complains.

Nothing contained in Petitioner's Petition for Writ of Certiorari demonstrates any illegality in this security transaction or how Petitioner could state grounds upon which to base jurisdiction of this Court or otherwise to justify the granting of his Petition as it pertains to these opposing respondents. Likewise, noth-

ing contained in that Petition derogates from or challenges the decision of the Supreme Court of the State of California in *Cooper v. Leslie Salt Company,* 70 Advance California 669 at pages 677 and 678 (1969), with unanimous concurrence, that the reclamation was a proper function of the District and that the general demurrer was correctly sustained as to Petitioner's attempt to allege a taxpayer's cause of action against respondents Schilling Estate Company and Leslie Salt Co. Moreover, Petitioner effectively admits the foregoing at page 6 of his Petition wherein he states that all of the matters of which he seeks review are concerned with the constitutionality, operation, and effect of the special act of the California Legislature which created the Estero Municipal Improvement District. None of these concerns are relevant to the judgment entered in favor of respondents Leslie Salt Co. and Schilling Estate Company.

II

THE "ONE MAN ONE VOTE" ISSUE IS NOT PERTINENT TO THESE OPPOSING RESPONDENTS

The alleged Constitutional defect of the Estero Act's property qualification for the right to vote, of which Petitioner complains, is in no way relevant to the alleged cause of action which Petitioner attempts to state against respondents Leslie Salt Co. and Schilling Estate Company. Obviously, no relief is sought against these respondents with respect to Petitioner's voting rights and therefore the Petition-

er's arguments pertaining thereto need no answer here.

III

PETITIONER'S ACTION TO OBTAIN AN ACCOUNTING FROM THE LAND DEVELOPER IS NOT PERTINENT TO THESE OPPOSING RESPONDENTS

Petitioner states that it was his second action filed in San Mateo County Superior Court as Action Number 127132 on December 20, 1966, in the form of a Petition for a Writ of Mandate (*Cooper v. Estero Municipal Improvement District,* 70 Advance California 687), which sought a mandate of the Superior Court to direct the Estero District to obtain an accounting from the land developer of the financial benefits it received from the District. As mentioned above, respondents Leslie Salt Co. and Schilling Estate Company were neither parties to, nor otherwise involved in, that action. Likewise, these respondents had no control over the land developer or the District's government. If Petitioner has been deprived of his property without due process of law, it was not the result, directly or indirectly, of any action or inaction of these opposing respondents.

CONCLUSION

In light of the foregoing, it is evident that Petitioner has not raised any issues for review by this Honorable Court which pertain to respondents Leslie Salt Co. and Schilling Estate Company or otherwise establish jurisdiction with respect to the issues relevant to said respondents. Accordingly, this Honorable Court should deny a Writ of Certiorari to the Supreme Court of the State of California as it would relate to the decision in *Cooper v. Leslie Salt Company, et al.*, California Supreme Court Number S.F. No. 22616 at 70 Advance California 669.

Dated, San Francisco, California,
June 12, 1969.

Respectfully submitted,
W. BURLEIGH PATTEE,
BRUCE M. CASEY, JR.,
WILLIAM E. TRAUTMAN,
Attorneys for Respondents Leslie Salt Co. and Schilling Estate Company.

CHICKERING & GREGORY,
Of Counsel.